



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 30, 1991

Mr. James Lee Murphy, III
Assistant General Counsel
Texas Department of Banking
2601 North Lamar Boulevard
Austin, Texas 78705-4294

OR91-658

Dear Mr. Murphy:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 12300.

You have received a number of requests for information relating to a transaction pursuant to the Texas Substitute Fiduciary Act, article 548h, V.T.C.S., involving MTrust Corporation, N.A., and Ameritrust, N.A. In a letter of April 4, 1991, the Texas Department of Banking ("the department") received an open records request for the following information:

- (i) the charter of MTrust Corp as a trust company, including any amendments;
- (ii) the document constituting a substitution agreement filed with the Texas Banking Commissioner on or about December 22, 1987 providing for substitution of MTrust Corp for MBank-Austin, N.A. with respect to certain trustee powers (apparently executed on October 1, 1987 and effective on January 1 1988);
- (iii) the application and charter of MTrust Corp which issued as of December 29, 1987;
- (iv) any amendments to the charter of MTrust Corp issued on December 29, 1987;

- (v) any document constituting the filing of MTrust Corp to convert to a national banking association;
- (vi) the charter of Ameritrust Texas, N.A., to conduct business in Texas as a national association with trust power;
- (vii) any amendments to the charter of Ameritrust Texas, N.A.; and
- (viii) any document constituting or certifying a change of name from MTrust Corp, N.A. to Ameritrust Texas, N.A.

A second request for information from the same requestor, dated April 16, 1991, confirmed receipt of items (i) through (iii) of the above information. However, the requestor sought additional information, including "a corrected certificate for the Articles of Incorporation of MTrust Corp. with the Articles of Incorporation of MTrust Corp. attached." In addition, the requestor sought:

- (i) the application and charter of MTrust Corp, N.A.;
- (ii) any amendments to the charter of MTrust Corp, N.A.;
- (iii) the articles of incorporation of MTrust Corp, N.A. and any amendments; and
- (iv) any document showing a transfer of trust powers from MTrust corp to MTrust Corp, N.A., or a name change from MTrust Corp. to MTrust Corp, N.A.

You received three requests from a second requestor, dated August 20, 1991, August 27, 1991, and August 29, 1991. The request of August 29, 1991, was the most inclusive and sought:

All documents filed in compliance with the Texas Substitute Fiduciary Act . . . including without limitation any substitution agreements filed pursuant to Section 2(a) of the Substitute Fiduciary Act and any document filed to comply with Section 7(a) of that same Act, by the following entities:

1. Ameritrust Texas National Association;
2. Ameritrust Texas Corporation;

3. Ameritrust Corporation;
4. MInvestment Corp.;
5. MCorp Financial, Inc.;
6. MTrust Corp, N.A.;
7. MBank Austin, N.A.;
8. MBank Dallas, N.A.;
9. MBank Houston, N.A.;
10. MBank Alamo, N.A.;
11. MBank Ft. Worth, N.A.;
12. MBank Wichita Falls, N.A.;
13. MBank Sherman, N.A.; and
14. MBank Odessa, N.A.

These requests were unrelated to the previous two. You informed us, however, that the documents responsive to these requests were identical to those responsive to the previous two requests.

In a letter dated April 24, 1991, you advised us that portions of the information requested in the letter of April 16, 1991, had been disclosed. At the same time, you submitted to us other information responsive to the request, Exhibits A and B. You advised us that you had no objections to disclosure of Exhibit A, but that information contained in Exhibit B is excepted from required public disclosure by common-law privacy interests. You requested an open records determination under sections 3(a)(1), 3(a)(4), 3(a)(10), and 3(a)(12) of the Open Records Act.

Pursuant to section 7(c) of the act, we notified the third party whose proprietary interests may have been compromised by disclosure of the requested information. In response, we received a letter dated September 17, 1991, from Ameritrust, which referred us to an earlier brief. This brief addressed the confidentiality of the same information requested here and claimed that Exhibit B was excepted from required public disclosure by sections 3(a)(1), 3(a)(4), 3(a)(7), 3(a)(10), and 3(a)(12) of the Open Records Act. Ameritrust also stated:

We assume that Exhibit A contains only copies of certain formal agreements and does not include attachments to those agreements which disclose detailed customer information. If that assumption is correct, Ameritrust does not claim

confidentiality as to those agreements and has no objection to their disclosure pursuant to the Open Records Act.

Exhibit A of the earlier request contains the same type of information contained in Exhibit A of the later request. Objections to disclosure were raised only as regarded detailed customer information such as were submitted in Exhibit B. Because no exceptions have been asserted for Exhibit A, there is no basis on which to pronounce it protected. *See* Open Records Decision No. 363 (1983). As we are unaware of any law which makes confidential information the type of which is contained in Exhibit A, Exhibit A may not be withheld from required public disclosure.

In a letter dated June 4, 1991, you informed us that information contained in Exhibit B had been disclosed to the requestor through affidavit form and that you were therefore withdrawing your request for an open records determination regarding that particular information. The information disclosed, and the information submitted to us as Exhibit B, was responsive to the request for "Schedule A" of the "Substitution Agreement." In a letter dated June 11, 1991, the requestor informed us: "I have withdrawn only that portion of my Open Records Act Request which sought production of that Schedule 'A' which was attached to the Substitution Agreement." As a general rule, if a governmental body releases information to one member of the public, the act's exceptions to disclosure are waived unless the information is deemed confidential under the act. *See* V.T.C.S. art. 6252-17a, § 14(a); Open Records Decision No. 463 (1987). Therefore, we must determine whether Exhibit B is confidential under the Open Records Act.

Section 3(a)(10) excepts from required public disclosure two types of information: (1) trade secrets, and (2) commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. The Texas Supreme Court has adopted the definition of trade secret from the Restatement of Torts, section 757 (1939). *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.), *cert. denied*, 358 U.S. 898 (1958). The Restatement lists six factors to be considered in determining whether information constitutes a trade secret:

- (1) the extent to which the information is known outside of [the proprietor's] business;

- (2) the extent to which it is known by employees and others involved in [the proprietor's] business;
- (3) the extent of measures taken by [the proprietors] to guard the secrecy of the information;
- (4) the value of the information to [the proprietors] and [their] competitors;
- (5) the amount of effort or money expended by [the proprietors] in developing the information;
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757, cmt. b (1939). These factors are indicia of whether information constitutes a trade secret; depending on the information being considered, one factor alone may be indication of a trade secret. *See* Open Records Decision No. 552 (1990) at 3.

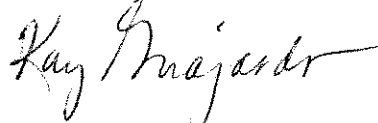
Ameritrust asserts that the information concerning their customers' identities and their accounts is at the very heart of their business and is closely guarded. Ameritrust also asserts:

[T]he documents in question have enormous value to Ameritrust. The development of our customers and the fostering of our client relationships have required years of careful effort and enormous expense. Indeed, it was precisely these client relationships which caused Ameritrust Corporation to pay millions of dollars in 1990 to acquire the business from MCorp Financial.

We have reviewed Ameritrust's arguments and conclude that it has established that the information contained in Exhibit B constitutes a trade secret and is excepted from required disclosure by section 3(a)(10). Accordingly, Exhibit B must be withheld from further public disclosure.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-658.

Yours very truly,



Kay H. Guajardo
Assistant Attorney General
Opinion Committee

KG/GK/lcd

Ref.: ID# 12300, 12428, 12677, 13541, 13636

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